

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on March 3, 2022
on the Zoom platform

Present:

Ed Lowry, Chair, Public Member
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Patricia Hapgood, Acting Executive Officer
Jeff Mojcher, Chief Counsel
Kevin Reedy, Presiding Administrative Law Judge
Sam Lucas, Presiding Administrative Law Judge
Aaron Jackson, Industrial Relations Counsel
Elizabeth Clarke, Staff Attorney
Vincent Mersich, Staff Attorney
Meghan Zapata, Staff Services Manager
Janis Jonas, Executive Secretary
Kerry Lewis, Administrative Law Judge
Christopher Jessup, Administrative Law Judge
Dan Lucido, Chief Counsel, DOSH
Matthew Lugo, DIR Office of the Director, Legislation and Regulations

Minutes of February 17, 2022 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the February 17, 2022 Board meeting.
Moved: Marvin Kropke
Seconded: Judith Freyman
The vote was 3-0

New Business:

(The appeals Board hears and discusses new reports presented by staff.)

No report.

Old Business:

(The appeals Board hears and/or discusses matters on a follow-up basis.)

1. Update on of regulatory amendments to the Board's rules of practice and procedure to govern, address and permit Board hearings via telephone or videoconference, including consideration of proposed amendments to Board regulation 376.

Action: Aaron Jackson updated the Board on progress of approving the regulatory amendments to the Board regulation 376.

2. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.

Action: Kevin Reedy updated the Board on the progress of the DOSH eAttorney system interfacing with OSHAB's OASIS program.

Legislation:

(Review and discuss current legislation which may affect the appeals Board.)

Action: Elizabeth Clarke updated the Board on current Legislation.

Chairperson's Report:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

Action: Chair Lowry reported on meeting with Worksafe regarding ergonomic standards. He also met with Dan Lucido, DOSH Chief Counsel, regarding DOSH staffing.

Board Members Reports:

(Hear reports from Board members on activities and issues affecting the Appeals Board.)

Action: No report.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Acting Executive Officer Patricia Hapgood reported that the Sacramento office building has been sold and will be under renovations. There are plans to install a card key entrance system at the building's main entrances and 65' Samsung televisions in conference rooms.

Ms. Hapgood updated the Board on staffing status.

COVID protocols – state employees to continue COVID protocols and masking.

Staff Reports:

(Reports from the presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

1. Discuss whether there are any proposals for new regulations or proposals for modifications to existing regulations. In addition, discuss whether any concerns exist with existing regulations.

Action: Aaron Jackson updated the Board on possible review and update for the regulations.

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2. Discuss status of Video Hearings.

Action: Christopher Jessup updated the Board on current video hearings.

3. Discuss recent appeals filed related to the current COVID-19 pandemic.

Action: Chair Lowry shared information on COVID related case.

4. Litigation update:

Action: Chief Counsel Jeff Mojcher reported on current court cases.

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

Public Comment:

(Public comment will be entertained during discussion of each agenda item of the open meeting.)

Action: The Board received public comments.

The board recessed to its closed session.

Decisions of Administrative Law Judges:

(Written decision issued by an Administrative Law Judge. The Decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the Decision. The board members review the Decision and decide if they will reconsider the ALJ Decision on their own motion.)

1377488 Mowery Thomason, Inc.

Action: The Board discussed this Decision.

Petitions for Reconsideration:

(The Division of Occupational Safety & Health and the Employer each have the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

1291481 Sierra Forest Products

Action: The Board voted to Grant Petition for Reconsideration.

Moved: Marvin Kropke

Seconded: Judith Freyman

Vote: 3-0

Orders Dismissing Appeal:

There were no Orders Dismissing Appeal listed for review.

Orders Denying Leave To File Late Appeal:

There were no Orders Denying Leave to File Late Appeal listed for review.

Matters Pending Reconsideration:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

The following list is intended to inform stakeholders and members of the public of what the Board believes is the issue of most interest to the general public presented in each of the following matters. The issues are listed so as to assist those interested in research or public information, and not litigation, and are not necessarily or exclusively the only issue or issues presented in each matter. The issues identified are not positions of the Board. Further, the Board may add and decide issues not included in the list or decide the matter on other grounds, under authority of Labor Code sections 6620 through 6623.

- 1141604 Boy Racer Inc. DBA Burning Angel
(Employer's Petition)
Whether adult film performers are employees or independent contractors.
- Action: The Board approved Order for Oral Arguments.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 3-0
- 1141604 Boy Racer Inc. DBA Burning Angel
(DOSH Petition)
Whether adult film performers are employees or independent contractors.
- Action: The Board approved Order for Oral Arguments.
Moved: Marvin Kropke
Second: Judith Freyman
Vote: 3-0
- 1494822 Ciasom, LLC dba Advoque Safeguard
Whether Employer operated an industrial truck within appropriate limits.
- 1332867 Guy F. Atkinson Construction, LLC
Whether the Division proved the alleged violation.
- 1410726 Hathaway Dinwiddie Construction Co.
Whether the Division proved the alleged violation.

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- 1290766 Millennium Reinforcing
Whether the Employer proved that wearing foot protection would not have prevented the injury. Whether futility is a defense to a personal protective equipment requirement.
- 1327187 Ontario Refrigeration Service, Inc.
Whether the Division proved the “serious” classification.
- 1224802 Ranch of the Golden Hawk
Whether the household domestic service exception applies to the tree trimming involved in this matter.
- 1155042 Signal Energy LLC
Whether Employer appropriately oversaw the actions of the subcontractors.
- 1192534 Shimmick Construction Company Inc.
Whether the employer committed the violation alleged.
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
Whether Employer violated section 3212(a)(2)(A) as alleged.
- 1509967 United Pumping Service, Inc.
Whether the citations were issued timely.
- Action: The Board discussed this matter.
- 1461476 Walmart, Inc.
Whether Walmart was an employer citable for the alleged violation.

Matters Pending Litigation:

(If the Division of Occupational Safety & Health or the Employer disagrees with a Decision after Reconsideration or a Denial of a Petition for Reconsideration, either one or both parties may apply to the California Superior Court for a Writ of Mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

Superior Court:

1. Key Energy Service, LLC (12004280)
2. Barnard Impregilo Healy, JV, CPF 17-515575, (317134021)
3. Ashley Furniture Industries, 34-2017-800002750 (1016514)
4. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
5. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)

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6. Process Cooling International, 34-2019-80003220 (1232555)
7. Prestige Painting, 37-2019-00066143 (1367265)
8. Davis Development Company, 34-2020-80003373 (1226084)
9. MWL Solutions, 34-2020-80003549 (1436014)
10. Hampton Tedder Electric, 34-2020-80003562 (1233597)
11. BMW West, LLC, 34-2021-80003574 (1399613)
12. Southern California Edison, 34-2021-80003580 (1320327)
13. L&S Framing, Inc., SCV-0046603 (1173183)
14. Granite Construction, 34-2021-80003634 (1235643)
15. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
16. Golden State FC, LLC dba Amazon Fulfillment, STK-CV-UWM-2021-0004380 (1310525)
17. USA Waste of California, Inc. dba Blue Barrel Disposal Services, 21STCP01729 (1384029)
18. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
19. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
20. RND Contractors, Inc., CIV SB 2119442 (1436785)
21. Sunview Vineyards of California, Inc. RG21111733 (1153101)
22. Hill Crane Service Inc., 34-2021-80003744 (1135350)
23. Amazon.com Services, LLC dba Amazon Warehouse LGB3, 22STCP00403 (1473644)

Appellate Court:

1. Interline Brands, Inc., CIVDS2021813 (1251604)

Other Items:

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.

Action: No report.

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2. Categorizing the Board's DARs and Denials on the DIR website.

Action: No report.

3. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.

Action: The Board discussed cases with citations related to COVID-19.

4. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.

Action: No report.

Orders Of Administrative Law Judges:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the Order and decide if they will reconsider or remand the issued order.)

1496512	Acme Home Elevator, Inc.
1474691	ADCO Roofing and Waterproofing, Inc.
1512541	Allen Construction, Inc.
1532362	Alpha Omega Wireless, Inc.
1501105	Amazon.Com Services, Inc.
1475881	Amazon.Com Services, LLC
1365144	Arborists That Climb, Inc.
1476551	Arden Group, Inc.
1348589	B&M Noble Co.
1503914	Beverly Community Hospital Association
1501756	California Prime Recovery Services, Inc.
1491484	Cardenas Markets. LLC #8
1493349	Ceibas Enterprise Inc.
1421014	City Of Los Angeles, Department Of Public Works
1518668	Commercial Metals Company
1521282	Covenant Care California, LLC
1515487	Creative Outdoor Environments
1494633	Custom Alloy Light Metals
1487523	Custom Comfort Mattress Company, Inc.
1263590	Downing Construction, Inc.
1306465	Eagle Roof Removal Inc.
1551813	Ernest J. Zeringue MD, Inc.
1494789	Fresh & Ready Foods LLC
1516021	Fresh & Ready Foods, LLC

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1481024	Galasso's Bakery
1515690	Gourmet Treats Baking Co., Inc.
1492009	J Reynolds & Co., Inc.
1485876	Jason B Bowen Chiropractic
1477812	Johns Manville
1502656	Kaiser Foundation Hospital
1474648	Kaiser Foundation Hospitals
1475603	Kaiser Permanente Antioch Medical Center
1459383	Kitchen Experts of California Incorporated
1485371	LA City Fire Department
1368566	LA City Water & Power
1502988	La Vie Wellness Inc.
1497912	Langer Juice Company Inc.
1460366	Largo Concrete, Inc.
1509602	Los Angeles Galvanizing Company
1296274	Maxim Crane Works, L.P
1530893	NP Mechanical, Inc.
1484306	Olam West Coast, Inc.
1520450	On-Target Indoor Shooting Range, LLC
1425240	Oro Grande School District
1422762	Plastics Technology, Inc.
1519848	Polycell Packaging Corporation
1490955	Ramco Enterprises, LP
1172198	Riverside Community College District Foundation -
1400232	Roth Staffing Companies, LP
1498065	Salizco, Inc.
1545778	San Francisco Municipal Transportation Agency
1546980	San Francisco Municipal Transportation Agency
1501349	San Francisco Public Utilities Commission
1463698	Siemens Mobility Inc.
1538403	University Mechanical & Engineering Contractors,
1398341	US Food Services
1279152	Vich Construction, Co.
1505904	Walmart, Inc.
1415516	West Coast Plastering, Inc.

Action: The Board reviewed and discussed the Settlement Orders issued by the Administrative Law Judges.

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Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session adjourned at 11:38 a.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its actions in the Closed Session, as indicated above. The meeting adjourned at 11:39 a.m.